IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.874 of 2006

The Bharat Co-operative Bank
(Mumbai) Ltd. & anr. Petitioners

Vs.

The Co-operative Bank Employees
Union & ors. Respondents

Mr.J.P.Cama, Senior Counsel with Mr.P.C. Pavaskar for petitioners.

Mr.C.U.Singh, Senior Counsel with Mr.M.D. Nagle for Respondent Nos.1 to 7.

CORAM: B.H.MARLAPALLE,J.

August 25, 2006.

P.C.

1. Heard Mr.Cama, the learned Senior Counsel with Mr.Pavaskar for the petitioners and Mr.C.U. Singh, the learned Senior Counsel with Mr.Nagle for Respondent Nos.1 to 7. Respondent Nos.8 and 9 are not necessary parties.

2. It appears that the Respondent No.1 - Union had filed Complaint (ULP) No.769 of 2002 before the Industrial Court at Mumbai under Item 5 of Schedule II and Items 3, 5, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. The said complaint came to be dismissed by the Industrial Court on the sole ground

that the Petitioner - Bank being a Multi State co-operative bank, the appropriate Government within the meaning of Section 2(3) of the MRTU & PULP Act, 1971 read with Section 2(a) of the Industrial Disputes Act, 1947 is the Central Government and, therefore, the Industrial Court established under the MRTU & PULP Act would not have jurisdiction to entertain the complaint. The Union, therefore, approached this Court on the Original Side by filing Writ Petition No.323 of 2003. While this petition was pending, the company dismissed some employees from its service on 20/4/2004. Writ Petition No.323 of 2003 came to be allowed by this Court (Single Judge) on 30/9/2004. However, at the request made by the learned counsel for the company the said order was stayed for a period of six weeks as the company wanted to challenge the view taken by the learned Single Judge. The company filed Appeal No.807 of 2004 on the Original Side of this Court challenging the judgment and order of the learned Single Judge in Writ Petition No.323 of 2003. The said appeal was dismissed by the Division Bench on 17th February 2005 confirming the view taken by the learned Single Judge of this Court. On the request made by the company the operation of the order was stayed by the Division

Bench for a further period of six weeks. The company approached the Apex Court by filing Special Leave to Appeal (Civil) No.8377 of 2005 and on 29/4/2005 the following order came to be passed:

> "Mr. C. Ravichandran Iyer, Advocate accepts notice on behalf of the respondent. Four weeks time is granted for filing the counter affidavit. Post after summer vacation."

3. The respondent-Union, being aware that the Apex Court had not granted any ad-interim relief in favour of the company, filed Complaint (ULP) No.332 of 2005 before the Labour Court at Mumbai sometimes in June 2005 and challenged the termination orders issued against the six workmen who also joined the Union as Complainant Nos.2 to 7. There was delay in filing the complaint and, therefore, an application for condonation of delay was separately moved in the said complaint and the said application came to be registered as Application No.43 of 2005 and it was opposed by the company on the ground that the issue regarding the appropriate Government is pending before the Apex Court and it appears that a copy of the order dated 29/4/2005 passed in the SLP was also

brought on record. The learned Judge of the Labour Court turned down the objection of the company for not proceeding further to decide the application for condonation of delay and noted that the order passed by the learned Single Judge and subsequently confirmed by the Division Bench was not stayed by the Apex Court and in any case the stay granted by the Division Bench was not in operation after a period of six weeks from 17th February 2005. The learned Judge of the Labour Court also observed that in case the company succeeds in the proceedings before the Apex Court the complaint could be dismissed but there was no reason to keep the decision on the application for delay condonation pending. The Labour Court further recorded its satisfaction for good and sufficient reasons having been made out to condone the delay and by its order dated 25/10/2005 the delay was condoned and the complaint was directed to be registered and to fix the case for filing written statement by the company. This order came to be challenged by the company in Revision Application (ULP) No.249 of 2005 filed under Section 44 of the MRTU and PULP Act, 1971. The learned Member of the Industrial Court while dismissing the revision application by his judgment and order dated 19/1/2006 in addition to the

factual position recorded by the Labour Court also noted that the Central Government vide its letter dated 30/8/2005 had informed the General Secretary of the complainant - Union that the appropriate Government in respect of the Multi State Co-operative Banks would be the State Government as per the verdict of the Division Bench of this Court. The Industrial Court further noted that after the Apex Court had passed the order on 29/4/2005 issuing notices to the parties, the company on the very next day i.e. on 30/4/2005 appeared before the Industrial Court in Application (MRTU) No.4 of 2005 which is an application filed by the rival Union seeking recognition under Section 11 of the MRTU and PULP Act and submitted its consent for granting recognition. Thus the company in a way conceded that the Application (MRTU) No.4 of 2005 filed by the rival Union under the MRTU and PULP Act was maintainable and in a way subjected itself to the jurisdiction of the Industrial Court.

4. Mr.Cama, the learned Senior Counsel for the petitioner - company submitted that the orders passed by the Labour Court as well as the Industrial Court are illegal and without any legal authority more so

when the Supreme Court is seized of the main issue as to whether the appropriate Government for the petitioner - Bank is the State Government or the Central Government and in case the Bank succeeds before the Supreme Court it would be clear that either the Labour Court or the Industrial Court will have no jurisdiction to entertain any complaint or any application under the MRTU & PULP Act, 1971. There can be no dispute on this view but the fact remains that as on today the view taken by this Court (Single Bench) and confirmed by the Division Bench has not been stayed by the Supreme Court and, therefore, the Labour Court was not wrong in proceeding to decide the application for delay condonation. If regards be had to the scheme of Section 28 of the MRTU & PULP Act in the first stage the complaint is filed, in the second stage it is entertained and thereafter application under Section 30(2) of the said Act would be considered for granting the interim relief. The respondent would be called upon to file written statement or replies and thereafter the adjudication of the complaint or the application begins. In the instant case all that the Labour Court has done is allowed the delay condonation application and directed the registration

of the complaint. Thus as at present the complaint has been entertained and the Bank has been called upon to file its written statement. The order passed by the Labour Court and confirmed by the Industrial Court therefore, does not suffer from any illegality.

5. However, it was submitted by Mr.Cama that on 17/7/2006 the application for interim relief was entertained by the Labour Court in Complaint (ULP) No.332 of 2005 and an order has been passed granting some monetary relief by way of subsistence allowance. Mr.Cama has placed before me a copy of the subsequent order dated 28/7/2006 passed in the pending SLP and as per the said order the SLP has been directed to be listed on 7th November as NMD matter for final disposal subject to overnight part-heard, if any. It is, therefore, clear now that the SLP is likely to come up before the Apex Court on 7th November 2006 for final disposal and if that be so, it would be appropriate that no further order granting any relief is passed by the Labour Court in the pending complaint.

6. Hence it is directed that in Complaint (ULP) No.332 of 2005 the Labour Court at Mumbai shall not

pass any order granting any relief to the complainants until 30th November 2006. However, this order will not come in the way of the Labour Court to take appropriate steps to complete the pleadings in the said complaint and it is made clear that this direction is given in this case alone i.e. Complaint (ULP) NO.332 of 2005 and more particularly by recording the fact that the pending SLP is likely to be taken up on 7th November 2006.

7. In view of the above directions, the petition is disposed off accordingly.

(B.H.MARLAPALLE,J.)